Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79- 79-388

STEPHEN G. RUDISILL,
Petitioner,

vs.

WESTERN INTERNATIONAL HOTELS COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, Stephen G. Rudisill, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above case.

OPINION BELOW.

The opinion of the Court of Appeals for the Seventh Circuit is unreported, and is set out in the Appendix, App. A, at pp. 1a-8a.

The decision granting defendant's motion to dismiss in the District Court, unreported, is attached as App. B, at 9b-12b.

JURISIDICTION.

The judgment of the court of appeals was entered on May 30, 1979. This Court has jurisdiction pursuant to 28 U.S.C. §1254 (1).

QUESTION PRESENTED.

Whether, under the rationale of Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978), private conduct pursuant to authority conferred by a state statute can amount to "state action" depriving an individual of a "Constitutional right".

46 LW 4438

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

U.S. Constitution, amendment XIV, §1:

> Section 1....nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act, 42 U.S.C §1983:

Civil Action for Deprivation of Rights.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for

Michigan Innkeepers Act (18.311 M.S.A., 427.101 M.C.L.):

> §18.311 Liability of innkeeper; loss or injury to ordinary personalty, limits. SECTION 1. The liability of the keeper of any inn, whether individual, partnership or corporation, for loss of or injury to personal property of his guest, shall be that of a depository for hire: Provided, however, That in no case shall such liability exceed the sum of two hundred fifty (250) dollars; and in case of the loss of a trunk or chest, and its contents, it shall not exceed the sum of one hundred fifty (150) dollars; in case of the loss of a valise, portmanteau, grip, telescope or dress suit case, and contents, it shall not exceed the sum of fifty (50) dollars; and in case of the loss of a box, bundle or package, and contents, it shall not exceed the sum of ten (10) dollars: And provided further, That nothing in

this act shall prohibit an innkeeper from assuming a greater liability than the sum of two hundred fifty (250) dollars for the personal effects of his guest: Provided, Said undertaking and agreement shall be in writing, stating the kind of personal property received and the value thereof, the kind and extent of the liability of said innkeeper, which said agreement shall be signed by said guests and said innkeeper or his clerk: And provided further, That nothing contained in this section shall preclude any remedy now existing for the enforcement of the hotel keeper's or innkeeper's lien.

STATEMENT OF THE CASE.

The Statute.

The present Michigan Innkeepers Act was enacted in 1915, and the nominal dollar limits set forth therein have been unchanged since 1915.

Reliance On The Statute.

Plaintiff's suitcase disappeared while in the custody of the defendant's hotel in Detroit. Plaintiff subsequently submitted a claim in the amount of $669 as compensation for the loss, and defendant relied upon the Michigan Innkeepers Act as limiting defendant's liability to an absolute maximum of $250, regardless of the extent of wrongdoing by defendant.

The District Court Action.

Following defendant's reliance on the Michigan Innkeepers Act, plaintiff, who is a resident of Chicago, filed a Civil Rights action in the U.S. District Court in Chicago challenging the constitutionality of the Michigan Innkeepers Act (Complaint attached as Appendix C, pp. 13c-19c. Defendant moved to dismiss the action, and that motion was granted on the briefs. The district court held that plaintiff "failed to adequately allege a constitutional right of which he has been deprived" (App. B at 11b).

The Seventh Circuit Appeal.

On appeal to the Court of Appeals for the Seventh Circuit, the order of the district court was affirmed. The court held that defendant's conduct in depriving plaintiff of his property rights pursuant to the Michigan Innkeepers Act could not amount to "state action" under the rationale of Flagg Bros., supra.

REASONS FOR GRANTING THE WRIT

This case is of exceptional public importance. The state statute at issue here is one of a class of such state statutes that purport to confer immunity -- either absolute or partial -- on a chosen few. The constitutionality of these statutes must be open to challenge, but the present decision would restrict such challenges to the state courts and bar the doors of the federal courts to such actions.

If allowed to stand, this decision would significantly expand the impact of Flagg Bros., which itself was the

subject of several vigorous dissents. According to the Court of Appeals' Court of Appeals' decision at issue here, Flagg Bros. stands for the proposition that no private action taken pursuant to a state statute can amount to "state action" under the Civil Rights Act.

Further, by closing the federal courts to actions challenging the constitutionality of discriminatory state statutes of the type at issue here, this decision would eliminate the beneficial effect often derived from federal court decisions in promoting uniformity among the 50 states. Each state would be left to establish its own standards for proper and improper discrimination under the U.S. Constitution.

CONCLUSION.

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

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APPENDIX.

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Argued: May 18, 1979

May 30, 1979.

Before

Hon. Walter J. Cummings, Circuit Judge

Hon. Robert R. Sprecher, Circuit Judge

Hon. Harlington Wood, Jr., Circuit Judge

STEPHEN G. RUDISILL	)	Appeal from the
	)	United States
Plaintiff-Appellant	)	District Court
	)	for the Northern
No. 78-2427 vs.	)	District of
	)	Illinois, Eastern
WESTERN INTERNATIONAL HOTELS COMPANY,	)	Division. No. 78-C-1656
	)	Thomas R. McMillen
Defendant-Appellee	)	Judge.

ORDER

Plaintiff appeals from the dismissal of his pro se civil rights suit under 42 U.S.C. § 1983 on the ground that the complaint failed to allege a deprivation of a constitutional right. We affirm.

I. FACTS

On checking out of defendant's hotel in Detroit, Michigan, plaintiff

left a suitcase with the hotel for the day and received a claim check which states the hotel's undertaking to safeguard plaintiff's property. Plaintiff returned later that day and presented the claim check. Hotel employees informed plaintiff that his suitcase could not be found and it has never been recovered. Plaintiff presented a claim for the suitcase and its contents to defendant and its insurer in the amount of $669.30. Defendant and its insurer refused to pay plaintiff more than $250, relying on a Michigan statute which limits an innkeeper's liability for a guest's personal property to that amount. Mich. Comp. Laws § 424.101 (Mich. Stat. Ann. § 18.311 (Callaghan 1971)). 1/

1/ The statute provides:

> The liability of the keeper of any inn, whether individual, partnership or corporation, for loss of or injury to personal property of his guest, shall be that of a depository for hire: Provided, however, That in no case shall such liability exceed the sum of two hundred fifty [250] dollars; and in case

Plaintiff then brought this action under 42 U.S.C. § 1983, alleging that his property was lost or stolen through defendant's negligence and in breach of its contract with him. The complaint alleges that defendant's

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1/ continued

of the loss of a trunk or chest, and its contents, it shall not exceed the sum of one hundred fifty [150] dollars; in case of the loss of a valise, portmanteau, grip, telescope or dress suit case, and contents, it shall not exceed the sum of fifty [50] dollars; and in case of the loss of a box, bundle or package, and contents, it shall not exceed the sum of ten [10] dollars: And provided further, That nothing in this act shall prohibit an innkeeper from assuming a greater liability than the sum of two hundred fifty [250] dollars for the personal effects of his guest: Provided, Said undertaking and agreement shall be in writing, stating the kind of personal property received and the value thereof, the kind and extent of the liability of said innkeeper, which said agreement shall be signed by said guests and said innkeeper or his clerk: And provided further, That nothing contained in this section shall preclude any remedy now existing for the enforcement of the hotel keeper's or innkeeper's lien.

refusal to pay the full value of that property deprived plaintiff of his property without due process and of equal protection of law. The district court granted the defendant's motion to dismiss, holding that the complaint failed to allege a deprivation of a right protected by the constitution.

II. DISCUSSION

A cause of action under § 1983 has two elements: (1) deprivation of a right "secured by the Constitution and laws" of the United States, (2) by a person acting "under color of any statute...of any state...." Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978); Adickes v. Kress & Co., 398 U.S. 144, 150 (1970); Sparkman v. McFarlin, No. 76-1706, slip op. at 6-7 (7th Cir. May 2, 1979) (Sprecher, J., concurring). The district court correctly held that plaintiff failed to allege the first element of such a cause of action.

Plaintiff's due process claim is that defendant's refusal to pay more

than $250 in reliance on the Michigan statute "deprives plaintiff of his right to full compensation for injuries suffered due to defendant's tort and breach of contract." Appellant's Br. at 7. While full compensation for injuries may be, at least colorably, a property right subject to Fourteenth Amendment protection, see Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59, 84-94 (1978); id. at 94 (Stewart, J., concurring), that protection extends only to deprivations by the states. Flagg Bros., Inc. v. Brooks, supra, 436 U.S. at 156-157. Thus the substantive constitutional rights asserted by plaintiff require "state action." 2/

2/ As in Flagg Bros., supra, there is no need to decide whether the "state action" requirement under the Fourteenth Amendment and the "under color of law" element of a § 1983 cause of action are co-extensive. It is clear, as in Flagg Bros., that plaintiff has alleged that defendant acted "with the knowledge of and pursuant to" the Michigan statute. Regardless of whether such allegations satisfy the

Plaintiff contends that the complaint alleges state action in two ways. First, he contends that the Michigan statute compelled defendant to deny full compensation. The terms of the statute, however, contradict that contention. The statute expressly permits innkeepers to assume a greater liability for guests' property. 3/ The statute no more

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2/ continued

under color of law element, they are not enough alone to show the state action necessary to allege a deprivation of a right secured by the Fourteenth Amendment, in order to satisfy the first element of a §1983 cause of action. Flagg Bros., supra, at 156.

3/ See note 1, supra. Indeed, it appears from the complaint that defendant did offer plaintiff more than the statutory limit. The complaint indicates that plaintiff lost a suitcase. Under the statute, if the suitcase is described as a "trunk or chest, and its contents," defendant's liability would be limited to $150; if the suitcase was "a valise, portmanteau, grip, telescope, or dress suit case, and contents," the limit would be $50. Yet the complaint indicates that defendant and its insurer were willing to pay $250.

than authorizes or encourages the limitation of liability; it does not compel it. Thus, defendants conduct may not be described as state action on this theory. Flagg Bros., supra, 436 U.S. at 164-166. Second, plaintiff argues that the statute delegates to defendant the state's sovereign power to resolve private disputes by allowing defendant to limit its liability. This argument has no merit because private dispute resolution is not an exclusive governmental function. Here for example, defendant presumably would have been free, without the statute, to limit its liability through its contract with plaintiff. See Flagg Bros., supra, at 160-163. Plaintiff argues that Flagg Bros. is distinguishable on this point because there the Court, according to plaintiff, stressed that alternative remedies existed under the New York statute considered there. A careful reading of the Court's opinion, id. at 160-161, shows that the decision is not based on alternative judicial remedies, but on the fact that private

dispute resolution "is not traditionally an exclusive public function." Id. at 161. One of the alternatives "stressed" by the Court was the possibility of changing the result authorized by the statute through the parties' contract. As noted on the compulsion issue above, the Michigan statute expressly provided that alternative to plaintiff here. Thus Flagg Bros. is controlling on this point also.

Since plaintiff has not alleged sufficient state action to show a deprivation of a right protected under the Fourteenth Amendment, the district court correctly held his § 1983 due process claim insufficient. His equal protection claim fails for the same reason.

The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STEPHEN G. RUDISILL,)
)
Plaintiff,)
)
v.) NO. 78 C 1656
)
WESTERN INTERNATIONAL)
HOTELS CO.,)
)
Defendant.)

DECISION GRANTING DEFENDANT'S MOTION TO DISMISS

This pro se complaint alleges that defendant Western International Hotels Co. deprived plaintiff of his civil rights under 42 U.S.C. §§1983 and 1985 by failing to completely reimburse him for the negligent loss of his luggage. State action is alleged by virtue of the Michigan Innkeepers Act, Mich. Comp. Laws ¶427.101 (Mich. Stat. Ann. ¶18.311) which limits a hotel's liability to $250.00 for loss of personal property of guests under certain conditions. Plaintiff alleges that his luggage and its contents were valued at $669.30.

Plaintiff requests that we declare the Michigan statute unconstitutional; that we find that the loss of his luggage was negligent; and that Western breached its contract to safeguard it.

Defendant has moved to dismiss, contending that plaintiff has failed to allege grounds for a violation of 42 U.S.C. §1985 and that plaintiff has failed to state a claim under §1983 because there exists no state action. We will grant the motion.

Plaintiff alleges that defendant acted under color of state law by invoking the Innkeepers' Act, thereby denying plaintiff the equal protection and due process guaranteeed by the Fourteenth Amendment. We can find no substance in plaintiff's equal protection claim, which seems to be that the Innkeepers' Act limits hotel liability but does not provide some equal benefit to guests. This is like comparing apples with oranges.

In his due process claim, plaintiff contends that he has been deprived of the value of his property

without a hearing. The fact that defendant is resisting plaintiff by invoking a state statute limiting liability does not mean that plaintiff is deprived of due process, however. A better forum for testing the Michigan statute is in the state courts of that jurisdiction, particularly when plaintiff is complaining of a mere common law tort. Bonner v. Coughlin, 517 F.2d 1311, 1319 (7th Cir. 1975).

Plaintiff cites Adickes v. Kress, 398 U.S. 144 (1970) and Peterson v. City of Greenville, 373 U.S. 244 (1963) in support of his contention that state action is sufficiently alleged where an individual is deprived of a constitutional right by a private party's invocation of a statute or ordinance. These cases are inapposite because plaintiff has failed to adequately allege a constitutional right of which he has been deprived.

11b

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant's motion is granted and the complaint is dismissed.

ENTER:

/s/ Thomas R. McMillen
JUDGE, U.S. DISTRICT COURT

DATED: Oct. 3, 1978

12b

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STEPHEN G. RUDISILL, Plaintiff,	)	
v.	)	C.A. No. 78 C 1656
WESTERN INTERNATIONAL HOTELS COMPANY, Defendant.	)	

COMPLAINT

This is a Civil Rights action to redress the deprivation of equal protection and due process and arises under the Fourteenth Amendment of the United States Constitution and under Sections 1983 and 1985(3) of Title 42, United States Code.

1. This is an action to redress the deprivation under color of the laws, statutes, regulations, customs, or usages of the State of Michigan of

the rights or privileges of equal protection and due process secured to Plaintiff by the Fourteenth Amendment to the Constitution of the United States, and arises under Section 1983 of Title 42, United States Code, as hereinafter more fully appears.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §1343.

3. Plaintiff, STEPHEN G. RUDISILL, is a citizen of the United States and the State of Illinois residing at 21293N Andover, Kildeer, Illinois 60047.

4. Defendant, WESTERN INTERNATIONAL HOTELS COMPANY, (hereinafter referred to as "Western") is a corporation registered to do business in the State of Illinois and having a place of business at 875 North Michigan Avenue, Chicago, Illinois and is the operator of the Detroit Plaza Hotel in Detroit, Michigan.

5. On March 5 to March 8, 1978, plaintiff was a guest of the Detroit Plaza Hotel, and on March 8, 1978, plaintiff checked out of said Hotel and delivered certain luggage into the

custody of Western for safekeeping that day, receiving a claim check stating:

> "The storage facility of the Detroit Plaza Hotel is maintained for the accommodation of its guests only, free of charge. Precaution is exercised to prevent loss or damage thru theft or otherwise. Thirty (30) days is our limit of storage. Valuable papers, Moneys, Jewels, etc., must be checked separately for which a vault or safe has been provided."

6. At about 1:00 P.M. on March 8, 1978, plaintiff tendered said claim check to said Hotel and requested return of said luggage, and was advised by Western that said suitcase could not be located. Western never located said suitcase, and requested plaintiff to contact its insurance company, Aetna Life and Casualty (hereinafter referred to as "Aetna"), with a claim for compensation for the loss of said luggage. Said luggage was lost due to negligence or theft by Western, and in violation of Western's contract with Plaintiff to safeguard said luggage and to exercise precaution

"to prevent loss or damage thru theft or otherwise," with resulting damage to Plaintiff in the amount of $669.30 (the value of said luggage and its contents).

7. Plaintiff subsequently submitted a claim for reimbursement of the value of said luggage and its contents, in the amount of $669.30, to Western and Aetna, and Plaintiff was informed by Aetna that neither Western nor Aetna would pay Plaintiff more than $250 for the loss of said suitcase and its contents, on the ground that the Innkeepers Act of the State of Michigan (18.311 M.S.A., 427.101 M.C.L.) limits the liability of Western to a maximum of $250 for the loss of any personal property of a hotel guest in the State of Michigan.

8. Western and Aetna, acting under the color and guise of the immunity allegedly granted Western by the Innkeepers Act of the State of Michigan, have deprived plaintiff of his property and his rights of equal protection and due process. That Act discriminatorily limits the liability

of the owners, operators, and employees of hotels and inns for property losses due to negligence and theft, without giving the same immunity to plaintiff and other members of the public, thereby depriving plaintiff and other members of the public of their rights of equal protection and due process. The Act also unfairly permits Western to entice customers by offering to safeguard luggage and other property entrusted to Western during such customers' rental of hotel rooms and other facilities offered by Western, and then when such luggage or other property is lost due to Western's negligence or theft, Western refuses to compensate its customers for any such loss and resorts to the immunity allegedly granted to Western and other hotel operators by the Innkeepers Act of the State of Michigan.

9. The refusal by Western and Aetna to compensate Plaintiff for the loss of his personal property that was entrusted to Western for safekeeping, with Western's consent and acceptance

is coerced by the Innkeepers Act of the State of Michigan, and has resulted in the deprivation of Plaintiff's property without a notice and opportunity to be heard as guaranteed by the due process protection of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Western as follows:

A. A judgment declaring that the Michigan state statute 18.311 M.S.A. (427.101 M.C.L.) is unconstitutional as violative of the Fourteenth Amendment of the United States Constitution and, therefore, null and void.

B. A judgment that the loss of Plaintiff's luggage that was entrusted to Western on March 8, 1978, was the result of negligence on the part of Western and that Western is liable to Plaintiff in the amount of $669.30, which is the value of the lost luggage.

C. A judgment that Western breached its contract with Plaintiff to safeguard the luggage that Plaintiff entrusted to Western for safekeeping

on March 8, 1978, and that Western is liable to Plaintiff in the amount of $669.30 as a result of said breach of contract.

D. For an award of attorneys fees, interest, costs and such other relief as the Court believes proper.

/s/ Stephen G. Rudisill
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AFFIDAVIT OF SERVICE

I, Stephen G. Rudisill, being duly sworn, hereby depose and say that three (3) copies of the foregoing "PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT" was served on this 27th day of August, 1979 by mailing the same by pre-paid First Class Mail to:

Ronald Orner, Esq.
Norton, Wasserman, Gary & Moore
33 North LaSalle Street
Chicago, Illinois 60602

Stephen G. Rudisill

Subscribed and sworn to
before me, a Notary Public,
this 27th day of August, 1979.

Notary Public

February 3, 1982
My Commission Expires